



FILED

06-26-06
03:42 PM

In the Matter of the Application of California-American Water Company (U210-W), a California Corporation, RWE Aktiengesellschaft, a Corporation Organized Under the Laws of the Federal Republic of Germany, Thames Water Aqua Holdings GmbH, a Corporation Organized Under the Laws of the Federal Republic of Germany, and American Water Works Company, Inc., for an Order Authorizing the Sale by Thames GmbH of up to 100% of the Common Stock of American Water Works Company, Inc. Resulting in a Change of Control of California-American Water Company and For Such Related Relief as May be Necessary to Effectuate Such Transaction.

A.06-05-025
(Filed May 22, 2006)

PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES

Pursuant to Rules 6(a) and 44 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") files this Protest to California-American Water Company's ("Cal Am") request for a change in control as a result of the sale by Thames GmbH of up to 100% of the common stock of American Water Works Company, Inc. ("American Water"), the parent Company of Cal-Am.

On May 26, 2006, Cal-Am, with RWE Aktiengesellschaft ("RWE"), Thames Water Aqua Holdings GmbH ("Thames") and American Water Works Company, Inc. filed an application requesting authorization for the sale by Thames of up to 100% of the common stock of American Water, resulting in a change of control of Cal-Am.

I. ISSUES

DRA files this protest to ensure that Cal Am's ratepayers are held indifferent and are not harmed by the proposed sale of the common stock of American Water. The Applicants indicate in their filing that the proposed transaction is in the public interest and will result in ratepayer benefits.

Based upon a preliminary review of the application, there are a multitude of areas that must be addressed to ensure that Cal-Am's ratepayers are not harmed by the transaction and, at a minimum, the Applicants meet the ratepayer indifference standard they assert in their application. The Application, however as filed, does not clearly demonstrate that the proposed transaction is in the public interest as contended by the Applicants, nor does it clearly demonstrate ratepayer indifference.

The Applicants state that they believe that Public Utilities Code Sections 854(b) & (c) do not apply to the proposed transaction because it does not involve an electric, gas, or telephone utility. DRA, however, strongly disagrees and believes the Applicants should not be exempt from the requirements under these sections.

DRA believes Sections 854(b) & (c) apply because these sections applied to the previous transaction where RWE acquired American Water. *See* Decision 02-12-068, Page 9-47. There is no reason why the standards utilized in approving the original acquisition should not apply now to this current proceeding. The Decision states that even though Sections 854(b) & (c) apply only to certain mergers, acquisitions, or changes in control involving electric, gas or telephone utilities, the Commission can "consider these factors in determining if the transaction is in the public interest." *See* Page 9.

Although DRA and the Applicants in the last proceeding (RWE's acquisition of American Water), settled many of the requirements under Sections 854(b) & (c), the parties nevertheless litigated these issues during evidentiary hearings. The Applicants in this current proceeding should be held to the same standards set out in the previous proceeding.

Additionally, DRA is reviewing the application and associated testimony, and it intends to conduct extensive discovery necessary to perform a detailed review of the application. While DRA has not completed its review of the proposed transaction and

related application, DRA has identified several issues that it intends to review and may address in evidentiary hearings. The following is a non-exhaustive list of those issues:

1. The Application indicates that Thames desires to sell 100% of the shares of American Water in an initial public offering (“IPO”), but may sell less than 100% depending upon market conditions, with the remaining shares sold in a subsequent offering. If less than 100% of the shares are sold, there may be issues regarding the level of influence and control Thames and RWE may have on American Water and Cal-Am after the proposed IPO occurs.
2. The proposed transaction will impact the capital structure and the weight of debt to equity, which is used in determining the overall rate of return upon which rates are determined. The Commission must evaluate the effects on the changes in the capital structure and weight of debt to equity.
3. The proposed transaction will result in a change in debt rates, and there will be a loss of the access to RWE’s capital. The Applicants have not demonstrated ratepayer indifference resulting from the changes in the access to capital, changes in debt, and debt rates.
4. The Commission must evaluate the potential effects on insurance costs as a result of the divestiture to determine if such costs will increase and if increased costs will be passed onto Cal-Am.
5. After the IPO, American Water, as a publicly-traded company in the United States, will be subject to the SEC’s extensive disclosure and governance requirements, including Sarbanes-Oxley related requirements, and more extensive internal control-related requirements, which are costly to implement and maintain. The Commission must evaluate the potential effects of such increased costs and the allocation of such costs to Cal-Am.
6. The Commission must ensure that none of the costs associated with the proposed transaction and resulting refinancing of debt are passed on either directly or indirectly to California’s ratepayers.
7. The Applicants request that the Commission remove all conditions imposed in D.02-12-068. The Commission must ensure that the removal of all

conditions, which were found by the Commission to be in the ratepayers' interest, do not result in potential harm to ratepayers or increases costs passed onto ratepayers.

8. The Commission must evaluate whether or not ratepayers have benefited from and will continue to benefit from the best practices touted as benefits in RWE's acquisition of American Water, which was approved in D.02-12-068 on December 19, 2002.
9. The Commission must evaluate whether or not ratepayers will be harmed from the loss of the potential benefit of the experience of Thames and RWE management, which was touted in RWE's acquisition of American Water.
10. The Commission must evaluate whether or not other changes in affiliated transactions and cost allocations may result, and if so, the impact on ratepayers of such changes.

DRA reserves the right to address other issues that may arise resulting from its review. The above list is not intended to be an exhaustive list as other issues may arise and require further investigation during the course of DRA's review.

In addition to the issues discussed above, DRA would also like to have Cal-Am's Advice Letter No.650-W on establishing a Sarbanes-Oxley compliance costs memorandum account to track Sarbanes-Oxley compliance-related costs allocated to Cal-Am, consolidated into this current proceeding, A.06-05-025. Under Advice Letter No.650-W, Cal-Am requests authority to create a Sarbanes-Oxley Compliance Costs Memorandum Account to track Cal-Am's allocated share of expenses incurred by its parent company, American Water, to comply with the audit, reporting, certification, and all other requirements pursuant to Sarbanes-Oxley Act of 2002. Cal-Am is seeking recovery of these costs in its General Rate Case for General Office.

Sarbanes-Oxley applies to companies that are publicly-traded in the United States. The Sarbanes-Oxley Act has instituted sweeping changes to the reporting and corporate governance obligations of publicly-traded companies and imposed more rigorous accounting standards and criminal liability on corporate officers and directors. The costs

in implementing Sarbanes-Oxley requirements have been much higher than companies have anticipated.

In Cal-Am's advice letter application, Cal-Am explains that when American Water returns to being a publicly-traded company due to the stock offering (RWE's divestiture of American Water) in this current proceeding, American Water will have to comply with Sarbanes-Oxley. The high costs associated with the Sarbanes-Oxley Act compliance will be incurred by American Water, potentially at a higher level due to the timing of the proposed transaction and the required compliance schedule.

Cal-Am's Advice Letter filing requesting a memorandum account to track costs associated to Sarbanes-Oxley compliance is a direct result of this change in control/stock offering application, and thus it should be consolidated into this current proceeding to ensure it is properly reviewed under the same context and issues. Absent the change in control/stock offering application, Sarbanes-Oxley compliance costs would not be incurred by American Water. These costs require review to ensure that the ratepayer indifference standard is met in the current proceeding.

II. PROCEDURAL ISSUES

A. Need for Hearings and Schedule

DRA agrees with the Applicants that public participation hearings are required. DRA believes that evidentiary hearings will be required as well. As discussed above, there are a multitude of issues the Commission must address in evaluating this application and it will require sufficient time to do so.

The Applicants state under John R. Bigelow's Direct Testimony that prior to the issuance of stock, a company must first prepare and file with the Securities and Exchange Commission ("SEC") a registration statement. The Applicants "do not anticipate that this initial filing with the SEC will occur before late 2006..." *See* Page 6 of Exhibit C. The Applicants add that the review and comment process by the SEC typically takes between two and three months from the time the initial registration statement is first filed with the SEC. *See id.*

Given the expected timeline the Applicants will follow for their SEC filing, the Commission must be given adequate time to properly evaluate the Applicants' Application. Thus, the following is DRA's proposed schedule:

Prehearing Conference	July 10, 2006
Public Participation Hearings	August 2006
DRA Reports & Intervenor Testimony	Last week of October 2006
Formal Settlement Negotiations	Beginning of November 2006
Evidentiary Hearings	Late November 2006
Opening Briefs Filed & Served	Mid-December 2006
Reply Briefs Filed & Served	Late December 2006
ALJ's Proposed Decision	Mid-January 2006
Comments on Proposed Decision	Late January 2006
Reply Comments	Mid-February 2007
Commission's Agenda	Earliest March 2007 Commission meeting

B. Categorization

DRA agrees that this proceeding should be categorized as a "ratesetting."

///

///

///

III. CONCLUSION

DRA recommends that the Commission consolidate Cal-Am's Advice Letter No. 650W with this current proceeding, A.06-05-025 and ensure DRA's issues regarding ratepayer interests are protected under this proposed transaction.

Respectfully submitted,

/s/ SELINA SHEK

Selina Shek
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1288
Fax: (415) 703-2262

June 26, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**” in A.06-05-025 by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[X] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on June 26, 2006 at San Francisco, California.

/s/ NANCY SALYER
Nancy Salyer

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

Service List
A.06-05-025

LDolqueist@steefel.com;
bmarticorena@rutan.com;
dstephen@amwater.com;
flc@cpuc.ca.gov;
lweiss@steefel.com;
meg@cpuc.ca.gov;
sel@cpuc.ca.gov;
sleeper@steefel.com;
townsley@amwater.com;